



UNC  
SCHOOL OF LAW

## NORTH CAROLINA LAW REVIEW

---

Volume 83  
Number 6 *North Carolina Issue*

Article 2

---

9-1-2005

# In Appreciation: Gene R. Nichol - Musings of an Associate Dean

Gail B. Agrawal

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

---

### Recommended Citation

Gail B. Agrawal, *In Appreciation: Gene R. Nichol - Musings of an Associate Dean*, 83 N.C. L. REV. 1419 (2005).  
Available at: <http://scholarship.law.unc.edu/nclr/vol83/iss6/2>

This Comments is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact [law\\_repository@unc.edu](mailto:law_repository@unc.edu).

# IN APPRECIATION: GENE R. NICHOL

## MUSINGS OF AN ASSOCIATE DEAN

GAIL B. AGRAWAL\*

Gene Nichol first walked through the doors into Van Hecke-Wettach Hall in the spring of 1999. He was a candidate to succeed Dean Judith Wegner, who had hired me two years earlier in the eighth year of her own tenure as dean. As I joined a small group of faculty members scheduled to meet with Professor Nichol that spring morning, I had definite, preconceived notions about law school deans. Gene Nichol fit none of them. Imagine my shock if I'd known then, as I do now, that his previous stints included not only the college football career that his physique foretold, but also rock musician in Hawaii and commercial fisherman in Alaska. I wasn't to learn until much later that the man I thought an unlikely dean counted among his personal heroes Abraham Lincoln and Bobby Kennedy, pictures of whom cover the walls of his office, or that he was prone to quoting the Reverend Martin Luther King, Jr., the essayist and novelist Ralph Ellison, and Czech poet and one-time president Vaclav Havel. How grateful I am—and how fortunate we are—that then-Chancellor, the late Michael Hooker, had a different notion, and sounder judgment, about the dean who would be the last he selected.

All of us at Carolina Law have come to know Dean Nichol's story. He grew up in Texas, the oldest son of a working class family. His undergraduate career began at the University of Florida. When the university's football coach adopted a style of play that didn't match his own, Nichol transferred to Oklahoma State University. He was the quarterback for the Oklahoma State Cowboys, a great passer aiming for a career in the NFL. He majored in philosophy, earning high honors and sowing the seeds of the deep thinker and public intellectual he was destined to become. After injuries ended his dreams of professional football, Nichol turned his sights to law school. He graduated from the University of Texas Law School and was

---

\* Senior Associate Dean and Interim Dean designate. I thank Professors William Marshall and Joseph Kennedy for helpful comments, and Professor Glenn George (Nichol) for her careful verification of the facts.

elected to the Order of the Coif. In the years since then, he has been a trial lawyer, a teacher, a scholar, and a published author many times over. His law review articles quickly established him as the nation's leading constitutional authority on Article III standing and justiciability. His words, reflecting his deeply held opinions, are printed on the pages of leading law journals, including the *Harvard Law Review* and the *Yale Law Journal*, and in the daily newspapers of the places he has called home, the *Raleigh News & Observer*, the *Denver Rocky Mountain News*, and the *Colorado Daily*. Although Nichol often quips he has a face made for a radio, for a while he was a television personality, host of *Culture Wars*, which aired on the Denver public affairs television station.

Nichol began his teaching career in 1978 at the West Virginia University Law School, where he won the Posten Faculty Research Award three years running. After spending a year at the University of Florida, he accepted a chaired professorship on the faculty at the College of William and Mary's Marshall Wythe School of Law, teaching constitutional law and serving as director of the Institute of Bill of Rights Law. There, Professor Nichol met and courted Professor Glenn George who was to become his wife. Daughters Jesse, Jenny, and Soren rounded out their family. Nichol's time at the College of William and Mary was to have a profound effect on his professional life as well, in ways he could not then have foreseen. For part of Nichol's tenure at William and Mary, Timothy J. Sullivan was the dean of the law school. Sullivan would later become the twenty-fifth president of the College and Nichol would return to William and Mary as his successor and twenty-sixth president.

Nichol's first deanship was at the University of Colorado Law School. He served for eight years, accepting the position at the young age of 37. He stepped down to campaign from Colorado for the United States Senate, and later for the House, winning at the state convention only to lose the primary elections. Ever the teacher, in an annual deans' issue of the *University of Toledo Law Review*, Nichol was to share the lessons the campaign trail offered to the law school dean.<sup>1</sup>

Gene Nichol accepted the deanship at the University of North Carolina on April 22, 1999. He had already committed to teach at Oxford that summer. Former dean Ken Broun served a brief period as interim dean, and Dean Nichol arrived to assume the post in

---

1. Gene R. Nichol, Jr., *Ten Small Lessons from the Campaign Trail*, 33 U. TOL. L. REV. 131 (2001).

August, becoming the fifteenth dean of the Law School. He moved into a wing of the building that his predecessor had planned, and later presided over its dedication by Justice Sandra Day O'Connor. The first public controversy of his deanship was a relatively minor one: a student petition seeking the removal of six panels of arts-and-craft-style windows hung in the Rotunda of the new wing. Dean Nichol's response was swift, and classic: he declared himself a product of the dust bowl of Oklahoma whose idea of fine art was his favorite Bob Dylan poster,<sup>2</sup> but the windows, he said, were going to stay. That was the end of it. He spoke; we listened and contentedly moved on. Later, Nichol would turn the Rotunda into a place where the law school community gathered to listen and to engage in enlightened discourse, to celebrate our successes and to mourn our losses. We have grown fond of the once-maligned windows, and fonder still of the brightly colored paintings by the late Nan Gressman that circle the space.<sup>3</sup>

Gene Nichol is a man of vision, and of achievement. He demanded that the Law School be both "great and public." In his efforts to secure that vision for us, he excelled on every measure by which law school deans are assessed. He increased the size of the faculty, recruiting leading scholars and great teachers to join those already here. During Nichol's tenure, we added to our ranks of senior faculty members a renowned First Amendment scholar and a nationally recognized expert on immigration and citizenship law, both of whom were soon recognized by the University with Kenan professorships. The rising stars that comprised his mid-level faculty hires made Carolina the envy of the legal academy. And, our entry-level hires were unsurpassed.

Dean Nichol encouraged scholarly ambition and the scholarly productivity of an already highly accomplished faculty reached new heights. For the first time, the University awarded the prestigious Philip and Ruth Hettleman Prize for Artistic and Scholarly Achievements by Young Faculty to a member of the law school faculty. In succeeding years, the Stanford-Yale Junior Faculty Forum selected the work of two untenured faculty members as the best in their fields among junior faculty. Faculty members were invited to

---

2. The Bob Dylan poster also hangs in his office.

3. The artwork was first displayed in the Rotunda when we gathered there to mourn and celebrate the life of the late Nan Gressman, wife of Professor Emeritus Eugene Gressman. It so brightened that space that Dean Nichol asked Professor Gressman to donate the works to the Law School. Professor Gressman proved as unable to say "no" to Nichol as the rest of us. He generously agreed.

present their work at the leading law schools and national academic conferences. Carolina faculty organized major conferences of their own here and at other law schools. The top academic presses published books written and edited by Carolina faculty. The leading law journals accepted their articles. And, faculty members published widely adopted casebooks on subjects as diverse as securitization and finance, social justice lawyering, comparative constitutional law, and labor relations and work law, to list only a small sample.

Nichol's ambitions were not limited to faculty members. He had high aspirations for Carolina's students. During his tenure, the *First Amendment Law Review* was added to an already impressive array of highly regarded student-edited journals, including the *North Carolina Law Review*, the *Journal of Law and Technology*, the *North Carolina Banking Institute Journal*, and the *Journal of International Law and Commercial Regulation*. Nichol challenged students to host their own academic conferences and agreed to support their efforts. The results exceeded even his expectations, with the student-edited journals holding interdisciplinary programs on such diverse topics as "The Resegregation of Southern Schools? A Crucial Moment in the History (and the Future) of Public Schools in America," "The USA Patriot Act," "The First Amendment and Press Coverage of Elections in the United States," "*Howerton* and the Future of Scientific Evidence in North Carolina," and "U.S.-Mexican Relations: Bridging Borders or Burning Bridges."

A vibrant public interest community flourished within the law school. Inspired by Dean Nichol's example, students embraced his passion for public service and pro bono work. As a young lawyer, Gene Nichol had walked away from a promising career as a trial lawyer, in large part because his industry clients' causes did not mirror his own. Nichol encouraged Carolina students to follow their principles to take on pro bono projects involving civil rights, domestic violence, and immigration. Students used their developing legal skills to provide tax assistance to low-income workers. Together, faculty members and students did life-changing work in the Innocence Project on behalf of wrongly convicted clients. And, the intellectual environment for students and faculty alike was stimulated by a diverse array of speakers, including jurists (e.g., United States Supreme Court Justices Antonin Scalia and Clarence Thomas, United States Court of Appeals Judge Eric Clay, South Carolina Chief Justice Jean Toal, and North Carolina Supreme Court Justices Robert Orr and Paul Martin Newby), federal legislators (e.g., the late Senator Paul Wellstone, Senator Alan Simpson, and Congressmen John Lewis

of Georgia and Mel Watt of North Carolina), legal scholars (e.g., Professors Erwin Chemerinsky and Ian Ayres) and leading lawyers (e.g., Attorney General Janet Reno, Elaine Jones of the NAACP Legal Defense Fund and Solicitor General Seth Waxman).

Our educational and service missions thrived under Dean Nichol's leadership. During his deanship, two law school faculty members received the University's Distinguished Teaching Award for Post-Baccalaureate Instruction, in recognition of excellence in the classroom. Nine distinguished professorships were awarded. The Law School increased its interdisciplinary programs for students, adding dual degrees in Sports Administration, Library Science and Information Technology, and Journalism to those in Business, Public Health, Social Work, Public Administration, and Public Policy. Course offerings were enhanced by the addition of new faculty and adjunct faculty. Clinical offerings expanded with the addition of the Community Development Clinic and a Policy Clinic focusing on international human rights, and clinic students racked up an impressive record of successes in their representation of indigent clients. The externship program established shortly before Nichol's arrival grew and thrived. Students served as judicial externs for Judge Allyson Duncan of the United States Court of Appeals for the Fourth Circuit, several justices on the Supreme Court of North Carolina, and a committed group of federal and state court judges. Student externs also worked with an impressive array of mentors in the legal community, including the North Carolina Innocence Project, the North Carolina Banking Commission, the North Carolina General Assembly, Blue Cross Blue Shield, and Red Hat.

Under the auspices of three centers established with Nichol's leadership, the tripartite mission of engaged scholarship, innovative teaching, and public service came together in powerful new ways to benefit law students and lawyers, the towns and state of North Carolina, and the nation. The Center for Banking and Finance supports the leadership role played by North Carolina-based financial institutions in the continual evolution of the financial services industry by studying the legal and policy issues related to banking and finance, advancing the teaching of banking and finance to law school students, and sponsoring conferences for industry professionals. Since its creation in 2000, the banking center has also raised funds to endow a term professorship, a research fund, and a scholarship. During the same period, the Center for Civil Rights has done path-breaking interdisciplinary work on public education, community development, health care, and voting rights. Its mission often

combines the efforts of law students and low income and minority groups to work for more just and equitable communities and inspires us all. And the newest, the Center on Poverty, Work and Opportunity, established in the last semester of Nichol's deanship, will create a non-partisan interdisciplinary forum to examine and address the problems of low-income families and communities and to train a new generation to combat the causes and effects of poverty to improve the circumstances of working people.

Nichol's powerful voice and his vision inspired confidence—at the statehouse, the offices of the system president and the chancellor, and among alumni on the bench and at the practicing bar—in the law school and what we could achieve under his leadership. One unmistakable testament to that confidence is his success as a fundraiser. Nichol was able to protect the law school from devastating legislative budget cuts and to increase state funding. The Campaign for Carolina generated over twenty million dollars in gifts and pledges, enough to fund six distinguished and two term professorships, twenty student scholarships and six student activities, and two endowed library funds, as well as to add to the facility and the dean's discretionary funds. In each of the six years of Nichol's deanship, cash gifts to the law school exceeded \$1 million, averaging just over \$1.5 million. Annual Fund giving increased each year and currently exceeds \$500,000.

The level of alumni involvement in law school activities is also a legacy of confidence in their "Dean Gene."<sup>4</sup> Nichol created an overwhelming sense of momentum among our alumni. He brought back to our campus Julius Chambers, the law school's greatest civil rights alumnus who led the NAACP Legal Defense Fund in the 1980s, to serve as director of the Center for Civil Rights, and former Senator, vice-presidential candidate and alumnus John Edwards to found the Center on Poverty, Work and Opportunity. In Nichol's six years as dean, alumni gatherings increased fourfold. New regional chapters were established in Atlanta, Washington, D.C., and New York, with Boston and Philadelphia alumni chapters now in formation. Participation in law alumni weekend tripled and the alumni banquets were oversold. The alumni-mentoring program expanded to provide a mentor for each entering law student.

Outside the law school, Gene Nichol fulfilled the exhortation to "do us proud" many times over. He continued to write and to publish

---

4. Unsurprisingly, alumni have also been heard to call Nichol "the Big Dean."

in major law reviews<sup>5</sup> and in journals for the practicing bar.<sup>6</sup> His essay "Ignoring Inequality," addressing southern income disparities and published in *Where We Stand: Voices of Southern Dissent*, was characterized as "serious and compelling" in the *Washington Post*.<sup>7</sup> He has been a widely sought-after public speaker, giving keynote addresses for a seemingly unending array of national organizations: the Alliance for Democracy, the ABA Conference of Chief Justices and Law School Deans, the National Association of Public Interest Lawyers, and the National Legal Aid and Defender Association. He won the coveted Edward R. Finch Award for the nation's best Law Day Address for "The Commands of Equal Justice," reminding us forcefully and unequivocally that lawyers are "charged . . . to make real the promises of democracy."<sup>8</sup> In 2004, he gave a keynote address for the Mexican American Legal Defense and Education Fund (MALDEF), but was proudest that Carolina Law alumnae Leonor Childers would receive the MALDEF Excellence in Community Service Award. And, he has spread his personal gospel of Carolina's "mandate of affordable, accessible, extraordinary [public] education" with his address "On Being Great and Public—Or, Why I Work at Carolina."<sup>9</sup> His message of justice, equal access, and fair treatment resonates powerfully with each of us who has had the good fortune to be called to the bar.

Gene Nichol is much more to the state of North Carolina than a public emissary, or even an exceptional law school dean, although he is both of these. He is an adopted son, claiming the state as his home in a way few non-native North Carolinians ever can. The editors of the *North Carolina Law Review* choose wisely in dedicating the "North Carolina" issue to him. But, Nichol's love for and

---

5. E.g., Gene R. Nichol, *Toward a People's Constitution*, 91 CAL. L. REV. 621 (2003) (reviewing ROBERT A. DAHL, *HOW DEMOCRATIC IS THE AMERICAN CONSTITUTION?* (2001)); Gene R. Nichol, *Poverty and Equality: A Distant Mirror*, 100 MICH. L. REV. 1661 (2002); Gene R. Nichol, Jr., *Standing for Privilege: The Failure of Injury Analysis*, 82 B.U. L. REV. 301 (2002); Gene R. Nichol, *Bill Aycock and the North Carolina Speaker Ban Law*, 79 N.C. L. REV. 1725 (2001); Gene R. Nichol, *The Impossibility of Lujan's Project*, 11 DUKE ENVTL. L. & POL'Y F. 193 (2001); Gene R. Nichol, *Law's Disengaged Left*, 50 J. LEGAL EDUC. 547 (2000); Gene R. Nichol, *Taking Economic Equality Off the Table*, 63 LAW & CONTEMP. PROBS. 353 (2000).

6. E.g., Gene R. Nichol, *American's Economic (and Legal) Apartheid*, MONT. LAW., Nov. 2003, at 5; Gene R. Nichol, *A Politician Practices What He Professes*, WYO. LAW., Feb. 2003, at 16; Gene R. Nichol, *The Command of Equal Justice*, COLO. LAW., Jul. 2002, at 57.

7. Edwin M. Yoder, Jr., *Southern Leaders, Texan Presidents and the Rabid Voice of Dissent*, WASH. POST, Aug. 29, 2004, at T03.

8. Nichol, *The Command of Equal Justice*, *supra* note 6, at 57.

9. Phi Beta Kappa Address, Chapel Hill, N.C. (March 2003).



commitment to the University of North Carolina at Chapel Hill is not limited to its law school. He has addressed incoming freshmen and provided locker-room pep talks to a discouraged football team. In a voice thick with emotion, he spoke at the campus's dedication of the Senator Paul D. Wellstone Memorial, declaring that Carolina's mission, like his friend Wellstone's passion, was to improve people's lives. To many, Nichol has become the conscience of North Carolina, an intellectual heir to Frank Porter Graham, Bill Aycock, and Bill Friday. At the 2004 annual meeting of the North Carolina Bar Association, Dean Nichol decided to forego the usual speech about law school achievements to urge the state bar to consider the dearth of lawyers of color in its leadership ranks and among the partners in the state's largest law firms. To its credit and to all our benefit, the bar leadership heard him and reconvened, inviting Nichol back to talk about building paths to progress. After publicly noting that the state's lobbying rules were among the most lax in the country, Nichol accepted the legislature's invitation to chair a committee that would review and revise them. He is frequently moved to deliver hard messages about important issues of the day and mastered early the lawyers' art of disagreeing without being disagreeable.

Dean Nichol is among the most gifted and eloquent orators of his generation. He speaks with courage, with conviction, and with passion, urging our students to do better, reach higher, achieve more than his own generation. For the last six years, he has been the voice of Carolina Law, standing on the steps of the law school to welcome excited and nervous "One Ls" in August and at the commencement podium to bid Godspeed to Carolina lawyers each May. We will miss the inspiration, strength, and humor his words brought to this place. And, we will miss him.

Perhaps Nichol's most oft-quoted line is this: "[t]he arc of the moral universe is long, but it bends toward justice."<sup>10</sup> I like to think it bends more perceptibly where Gene Nichol is, and where he has been.

---

10. Rev. Martin Luther King, Jr., *Our God is Marching On!*, Address at Montgomery, Alabama (Mar. 25, 1965) (paraphrasing Rev. Theodore Parker, *TEN SERMONS OF RELIGION* 84-85 (1853)), available at <http://www.stanford.edu/group/King/publications> (on file with the North Carolina Law Review).